

RESPONSE

I. Status of the Claims

Prior to the present paper, claims 110-113, 116-164, 167-172, 174-184, 186-189, 191-193, 195-208 and 211-218 were pending and have been examined. The sixth Action allows claims 110-113, 116-132, 134, 135, 137-164, 167-172, 174-184, 186-189, 191-193, 195-208 and 211-218. Presently, claims 133, 136, 149, 150 and 151 have been amended without prejudice. No claims have been canceled or added.

Claims 110-113, 116-164, 167-172, 174-184, 186-189, 191-193, 195-208 and 211-218 are therefore in the case. According to the revisions to 37 C.F.R. § 1.121(c), a copy of the pending claims is provided in the amendment section.

II. Support for the Claims

Support for the revised claims exists throughout the specification and claims of the original and parent applications and, particularly, in the claims pending prior to the present paper.

Claims 133 and 136 have been amended to place in independent form, in the same manner as claim 134, and are supported by claims 113, 133, 134 and 136.

Each of claims 149, 150 and 151 have been amended to remove SEQ ID NO:50 from the sequences recited in terms of the % identities.

It will therefore be understood that no new matter is included within any of the revised claims.

III. Applicant's Telephone Interview Summaries

After assessing the sixth Action, Applicant's undersigned representative telephoned Examiner Steadman to discuss matters. A series of telephone calls and telephone interviews

were held between September 17, 2003 and January 07, 2004. Applicant appreciates the Examiner's time and input throughout.

In a telephone interview held October 07, 2003, Applicant's representative pointed out that the Office Action Summary page indicated a one month response period, but that the Office Action at page 3 referred to the typical three and two month response periods. Examiner Steadman indicated that the typical three and two month response periods were intended.

The clarity rejection of claims 133 and 136 was also discussed during the telephone interview of October 07, 2003. It was agreed that revising claims 133 and 136 to be independent, in the same manner as claim 134, would overcome the rejection.

During the series of telephone interviews, Examiner Steadman also raised the issue of interfering subject matter. Applicant agrees with the Examiner's Telephone Interview Summary sent by facsimile on January 07, 2004. Claims 149, 150 and 151 have been revised to remove the interfering subject matter.

Applicant has taken care to review all claims for potential interference due to a % identity limitation in regard to SEQ ID NO:50 (see last sentence of the Examiner's Telephone Interview Summary). Although other pending claims in the present application define various sequences in terms of % identity, such claims concern two nucleic acid sequences or expression units, which encode the small and large subunits of P-TEFb, respectively. As agreed during the telephone interview of January 07, 2004, this does not constitute interfering subject matter.

Therefore, during the telephone interviews from September 17, 2003 to January 07, 2004, agreement was reached on all procedural and substantive steps required to place the application in condition for allowance.

In order to progress the application to issue, particularly in light of patent term issues, all such agreed actions are implemented by the present response. These actions do not indicate acquiescence with the rejection and do not indicate that the present Applicant was not the first to invent the interfering subject matter removed from the claims.

IV. Period for Response

The period for response to the sixth Action is three months and runs until December 09, 2003 (sixth Action at page 3; telephone interview). The present response is therefore timely filed with a one month extension and appropriate fee.

V. Entry of Amendments

The present amendments are entitled to entry after final rejection. The amendments place all claims in condition for allowance by conforming two dependent claims to an allowed independent claim and by removing interfering subject matter. The amendments also correspond to amendments agreed to be enterable and allowable in telephone interviews with the examiner. The amendments thus expressly adopt the examiner's directions for allowance, and are therefore entitled to entry after final rejection under 37 C.F.R. § 1.116(b).

The amendments are additionally entitled to entry after final rejection as the amendments are effective to secure allowance and could not have been earlier presented, being only solicited in telephone interviews after the final Action. The amendments are thus also acceptable after-final under 37 C.F.R. § 1.116(c).

VI. Rejection of Claims 133 and 136 Under 35 U.S.C. § 112, Second Paragraph

Claims 133 and 136 are newly rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite and for failing to particularly point out and distinctly claim the invention.

Although Applicant respectfully traverses, the rejection is overcome. As agreed in telephone interviews documented above, claims 133 and 136 have been revised to place in independent form, in the same manner as claim 134. The § 112, second paragraph rejection is thus overcome.

VII. Specification Informalities

The sixth Action also points out that SEQ ID NO:46 and SEQ ID NO:47 have a discrepancy in regard to the amino acid at position 207 and the corresponding codon. Applicant is in the process of resolving this informality, which will be corrected before issue.

VIII. Conclusion

This is a complete response to the referenced Official Action. In conclusion, Applicant submits that, in light of the allowed claims and the agreement reached during the telephone interviews, as documented herein, the present case is in condition for allowance and such favorable action is respectfully requested. Should Examiner Steadman have any questions or comments, a telephone call to the undersigned Applicant's representative is earnestly solicited.

Respectfully submitted,
Williams, Morgan & Amerson, P.C.
Customer No. 23720



Shelley P.M. Fussey, Ph.D.
Reg. No. 39,458
Agent for Applicant

10333 Richmond, Suite 1100
Houston, Texas, 77042
(713) 934-4079

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